

Industrial Impact Subcommittee Amendment #1

Amendment No. 1 to HB1300

**Hargrove
Signature of Sponsor**

AMEND Senate Bill No. 1347*

House Bill No. 1300

FILED
Date _____
Time _____
Clerk _____
Comm. Amdt. _____

by deleting all of the language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 56, is hereby amended by adding Sections 2 through 14 of this act as a new chapter thereto.

SECTION 2. This act shall be known and may be cited as the "Tennessee Vehicle Protection Product Act."

SECTION 3. As used in this part:

(1) "Administrator" means a third party other than the warrantor who is designated by the warrantor to be responsible for the administration of vehicle protection product warranties.

(2) "Incidental costs" means expenses specified in the warranty incurred by the warranty holder related to the failure of the vehicle protection product to perform as provided in the warranty. Incidental costs may include, without limitation, insurance policy deductibles, rental vehicle charges, the difference between the actual value of the stolen vehicle at the time of theft and the cost of a replacement vehicle, sales taxes, registration fees, transaction fees, and mechanical inspection fees.

(3) "Vehicle protection product" means a vehicle protection device, system, or service that:

(A) Is installed on or applied to a vehicle;

(B) Is designed to prevent loss or damage to a vehicle from a specific cause; and

(C) Includes a written warranty.

The term "vehicle protection product" shall include, without limitation, alarm systems, body part marking products, steering locks, window etch products, pedal and ignition locks, fuel and ignition kill switches, and electronic, radio, and satellite tracking devices.

(4) "Vehicle protection product warranty" or "warranty" means a written agreement by a warrantor that provides that if the vehicle protection product fails to prevent loss or damage to a vehicle from a specific cause, then the warranty holder shall be paid specified incidental costs by the warrantor as a result of the failure of the vehicle protection product to perform pursuant to the terms of the warranty.

(5) "Vehicle protection product warrantor" or "warrantor" means a person who is contractually obligated to the warranty holder under the terms of the vehicle protection product warranty agreement. "Warrantor" does not include an authorized insurer.

(6) "Warranty holder" means the person who purchases a vehicle protection product or who is a permitted transferee.

(7) "Warranty reimbursement insurance policy" means a policy of insurance that is issued to the vehicle protection product warrantor to provide reimbursement to the warrantor or to pay on behalf of the warrantor all covered contractual obligations incurred by the warrantor under the terms and conditions of the insured vehicle protection product warranties sold by the warrantor.

SECTION 4.

(a) No vehicle protection product may be sold or offered for sale in this state unless the seller, warrantor, and administrator, if any, comply with the provisions of this chapter.

(b) A vehicle protection product warranty provided or sold in compliance with this chapter is not a contract of insurance.

(c) Warranties, indemnity agreements, and guarantees that are not provided as a part of a vehicle protection product are not subject to the provisions of this chapter.

SECTION 5.

(a) A person may not operate as a warrantor or represent to the public that the person is a warrantor unless the person is registered with the department on a form prescribed by the commissioner.

(b) Warrantor registration records shall be filed annually and shall be updated by the warrantor within thirty (30) days of any change. The registration records shall contain the following information:

(1) The warrantor's name, any other names under which the warrantor does business in the state, principal office address, and telephone number;

(2) The names of the warrantor's executive officer or officers directly responsible for the warrantor's vehicle protection product business;

(3) The name, address, and telephone number of any administrators designated by the warrantor to be responsible for the administration of vehicle protection product warranties in this state;

(4) A copy of the warranty reimbursement insurance policy or policies or other financial information required by Section 6 below;

(5) A copy of each warranty the warrantor proposes to use in this state; and

(6) A statement indicating under which provision of Section 6 below that the warrantor qualifies to do business in this state as a warrantor.

(c) The commissioner may charge each registrant a reasonable fee to offset the cost of processing the registration and maintaining the records. Such fee shall be set by the commissioner in an amount not to exceed the amount necessary to defray the department's expenses in administering this chapter.

(d) If a registrant fails to register by the renewal deadline, the commissioner shall give the registrant written notice of the failure and the registrant will have thirty (30) days to complete the renewal of the registration before the registration is revoked. Revocation for failure to renew a registration does not require any additional notice or a hearing.

(e) An administrator or person who sells or solicits a sale of a vehicle protection product but who is not a warrantor shall not be required to register as a warrantor or be licensed under the insurance laws of this state to sell vehicle protection products.

SECTION 6. No vehicle protection product shall be sold or offered for sale in this state unless the vehicle protection product warrantor is insured under a warranty insurance policy meeting the following conditions in order to ensure adequate performance under the warranty:

(1) The warranty reimbursement insurance policy is issued by an insurer authorized to do business in this state and provides that the insurer will pay to, or on behalf of, the warrantor one hundred percent (100%) of all sums that the warrantor is legally obligated to pay according to the warrantor's contractual obligations under the warrantor's vehicle protection product warranty;

(2) A true and correct copy of the warranty reimbursement insurance policy has been filed with the commissioner by the warrantor; and

(3) The policy contains the provisions required by Section 7 below.

SECTION 7. No warranty reimbursement insurance policy shall be issued, sold, or offered for sale in this state unless the policy meets the following conditions:

(1) The policy states that the issuer of the policy will reimburse or pay on behalf of the vehicle protection product warrantor all covered sums which the warrantor is legally obligated to pay, or will provide all service that the warrantor is legally obligated to perform according to the warrantor's contractual obligations under the provisions of the insured warranties sold by the warrantor;

(2) The policy states that in the event that payment due under the terms of the warranty is not provided by the warrantor within sixty (60) days after proof of loss has been filed according to the terms of the warranty by the warranty holder, the warranty holder may file directly with the warranty reimbursement insurance company for reimbursement;

(3) The policy provides that a warranty reimbursement insurance company that insures a warranty shall be deemed to have received payment of the premium if the warranty holder paid for the vehicle protection product and the insurer's liability under the policy shall not be reduced or relieved by a failure of the warrantor, for any reason, to report the issuance of a warranty to the insurer; and

(4) The policy has the following provisions regarding cancellation of the policy:

(A) The issuer of a reimbursement insurance policy shall not cancel such policy until a notice of cancellation in writing has been mailed or delivered to the commissioner and each insured warrantor;

(B) The cancellation of a reimbursement insurance policy shall not reduce the issuer's responsibility for vehicle protection products sold prior to the date of cancellation; and

(C) In the event an insurer cancels a policy that a warrantor has filed with the commissioner, the warrantor shall do either of the following:

(i) File a copy of a new policy with the commissioner, before the termination of the prior policy, provided that there is no lapse in coverage following the termination of the prior policy; or

(ii) Discontinue acting as a warrantor as of the termination date of the policy until a new policy becomes effective and is accepted by the Commissioner.

SECTION 8.

(a) Every vehicle protection product warranty shall be written in clear, understandable language and shall be printed or typed in an easy-to-read point size and font and shall not be sold or offered for sale in the state unless the warranty:

(1) Contains a disclosure that reads substantially as follows: "This agreement is a product warranty and is not insurance.";

(2) Identifies the warrantor, the administrator (if any), the seller, and the warranty holder;

(3) Sets forth the procedure for making a claim, including a telephone number;

(4) Sets forth the total purchase price, including the price of the warranty if sold for an additional fee and the terms under which it is to be paid; however, the purchase price is not required to be preprinted on the vehicle protection product warranty and may be negotiated with the consumer at the time of sale;

(5) Sets forth any terms, restrictions, or conditions governing transferability of the warranty, if any;

(6) Conspicuously sets forth all of the obligations and duties of the warranty holder such as the duty to protect against any further damage to the vehicle, the obligation to notify the warrantor in advance of any repair, or other similar requirements, if any;

(7) Conspicuously states the existence of a deductible amount, if any;

(8) Specifies the payments or performance to be provided under the warranty including payments for incidental costs, the manner of calculation or determination of payments or performance, and any limitations, exceptions, or exclusions;

(9) Sets forth the conditions on which substitution will be allowed;

(10) Conspicuously states that the obligations of the warrantor to the warranty holder are insured under a warranty reimbursement insurance policy;

(11) Conspicuously states that, in the event a warranty holder must make a claim against a party other than the warranty reimbursement insurance policy issuer, the warranty holder is entitled to make a direct claim against the insurer upon the failure of the warrantor to pay any claim or meet any obligation under the terms of the warranty within sixty (60) days after proof of loss has been filed with the warrantor; and

(12) Conspicuously states the name and address of the issuer of the warranty reimbursement insurance policy. This information need not be preprinted on the warranty form but may be stamped on the warranty.

(b) At the time of sale, the seller or warrantor shall provide to the purchaser:

(1) A copy of the vehicle protection product warranty; or

(2) A receipt or other written evidence of the purchase of the vehicle protection product and a copy of the warranty within thirty (30) days of the date of purchase.

SECTION 9.

(a) No vehicle protection product may be sold or offered for sale in this state unless the vehicle protection product warranty clearly states the terms and conditions governing the cancellation of the sale and warranty, if any.

(b) The warrantor may only cancel the warranty if the warranty holder does any of the following:

(1) Fails to pay for the vehicle protection product;

(2) Makes a material misrepresentation to the seller or warrantor;

(3) Commits fraud; or

(4) Substantially breaches the warranty holder's duties under the warranty.

(c) A warrantor canceling a warranty shall mail written notice of cancellation to the warranty holder at the last address of the warranty holder in the warrantor's records at least thirty (30) days prior to the effective date of the cancellation. The notice shall state the effective date of the cancellation and the reason for the cancellation.

SECTION 10.

(a) Unless licensed as an insurance company, a vehicle protection product warrantor shall not use in its name, contracts, or literature the words "insurance," "casualty," "surety," "mutual," or any other word that is descriptive of the insurance, casualty, or surety business or that is deceptively similar to the name or description of any insurance or surety corporation or any other vehicle protection product warrantor. A warrantor may use the term "guaranty" or a similar word in the warrantor's name.

(b) A vehicle protection product warrantor shall not make, permit, or cause any false or misleading statements, either oral or written, in connection with the sale, offer to sell, or advertisement of a vehicle protection product.

(c) A vehicle protection product warrantor shall not permit or cause the omission of any material statement in connection with the sale, offer to sell, or advertisement of a vehicle protection product, which under the circumstances should have been made in order to make the statements that were made not misleading.

(d) A vehicle protection product warrantor shall not make, permit, or cause any false or misleading statements, either oral or written, about the performance required or payments that may be available under the vehicle protection product warranty.

(e) A vehicle protection product warrantor shall not make, permit, or cause any statement or practice that has the effect of creating or maintaining a fraud.

(f) A vehicle protection product seller or warrantor may not require as a condition of sale or financing that a retail purchaser of a motor vehicle purchase a vehicle protection product that is not installed on the motor vehicle at the time of sale.

SECTION 11.

(a) All vehicle protection product warrantors shall keep accurate accounts, books, and records concerning transactions regulated under this chapter.

(b) A vehicle protection product warrantor's accounts, books, and records shall include:

(1) Copies of all vehicle protection product warranties;

(2) The name and address of each warranty holder; and

(3) The dates, amounts, and descriptions of all receipts, claims, and expenditures.

(c) A vehicle protection product warrantor shall retain all required accounts, books, and records pertaining to each warranty holder for at least two (2) years after the specified period of coverage has expired. A warrantor discontinuing business in the state shall maintain its records until it furnishes the commissioner satisfactory proof that it has discharged all obligations to warranty holders in this state.

(d) Vehicle protection product warrantors shall make all accounts, books, and records concerning transactions regulated under this chapter available to the commissioner for the purpose of examination.

SECTION 12.

(a)

(1) The commissioner may conduct examinations of warrantors, administrators, or other persons to enforce this chapter and protect

warranty holders in this state. Upon request of the commissioner, a warrantor shall make available to the commissioner all accounts, books, and records concerning vehicle protection products sold by the warrantor that are necessary to enable the commissioner to reasonably determine compliance or noncompliance with this chapter.

(2) Any person or entity examined shall pay any and all appropriate and reasonable costs incurred by the commissioner during the examination, including, but not limited to the compensation of such experts, actuaries, examiners or other persons as may be contracted for by the commissioner or the commissioner's designated appointee for the purpose of assisting in the examination. Such compensation shall be fixed at a reasonable amount commensurate with usual compensation for like services, and shall be contracted for in accordance with applicable state contracting procedures, if applicable.

(b) The commissioner may take action that is necessary or appropriate to enforce the provisions of this chapter and the commissioner's rules and orders and to protect warranty holders in this state. If a person or entity violates this chapter and the commissioner reasonably believes such violation threatens to cause irreparable loss or injury to the property or business of any person or company located in this state, the commissioner may:

(1) Issue an order directed to that warrantor to cease and desist from engaging in further acts, practices, or transactions that are causing the conduct;

(2) Issue an order prohibiting that warrantor from selling or offering for sale vehicle protection products in violation of this chapter;

(3) Issue an order imposing a civil penalty on that warrantor; or

(4) Issue any combination of subparts (1) through (3) of this subsection, as applicable.

(c) At any hearing under this chapter, the provisions of the Uniform Administrative Procedures Act, compiled at Title 4, Chapter 5 shall apply.

(d) The commissioner may bring an action in any court of competent jurisdiction for an injunction or other appropriate relief to enjoin threatened or existing violations of this chapter or of the commissioner's orders or rules. An action filed under this section also may seek restitution on behalf of persons aggrieved by a violation of this chapter or orders or rule of the commissioner.

(e) A person or entity who is found to have violated this chapter or orders or rules of the commissioner may be ordered to pay to the commissioner a civil penalty in an amount, determined by the commissioner not to exceed \$5,000 per violation.

SECTION 13. Any warrantor doing business in this state in accordance with this chapter shall be deemed to have appointed the commissioner its true and lawful attorney upon whom may be served all lawful process in any action or proceeding against it. Any warrantor doing business in this state unauthorized by this chapter shall be deemed to have appointed the secretary of state to be its true and lawful attorney upon whom may be served all lawful process in any action or proceeding against it.

SECTION 14. The commissioner may adopt such administrative rules consistent with the provisions of this chapter as are necessary to implement them. Such rules and regulations shall include disclosures for the benefit of the warranty holder, record keeping requirements, registration fees, penalties, and procedures for public complaints. Such rules and regulations shall also include the conditions under which surplus lines insurers may be rejected for the purpose of underwriting vehicle protection product warranty agreements.

SECTION 15. This act applies to all vehicle protection products sold or offered for sale on or after the effective date of this act. The failure of any person to comply with this act prior to its effective date shall not be admissible in any court proceeding, administrative proceeding, arbitration, or alternative dispute resolution proceeding and

may not otherwise be used to prove that the action of any person or the affected vehicle protection product was unlawful or otherwise improper.

SECTION 16. For the purpose of promulgating rules and regulations, this act shall take effect upon becoming law, the public welfare requiring it. For all other purposes, this act shall take effect July 1, 2006, the public welfare requiring it.